IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 2ND MARCH 2007 / 11TH PHALGUNA 1928

Crl.MC.No. 39 of 2007()

CRIME NO. 413/06 OF VIYYUR POLICE STATION
CRL.M.C. 4016/06 OF SESSIONS COURT, THRISSUR

.....

PETITIONER: COMPLAINANT

STATE OF KERALA, THROUGH THE
SUB INSPECTOR OF POLICE, VIYYOOR POLICE STATION
REP. BY THE ADDL. PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

RESPONDENTS: 6TH ACCUSED

AYYAPPAN, AGED 44 YEARS,
NADUVIL PURCKAL HOUSE, KUTTOOR VILLAGE
AND DESOM, THRISSUR.

BY ADV. SRI.JIJO PAUL

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 02/03/2007, ALONG WITH CRMC NO. 56 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

Crl.M.C.Nos. 39 & 56 of 2007

- -

Dated this the 2nd day of March, 2007

O R D E R

The State is the petitioner in these Crl.M.Cs. The State claims to be aggrieved by the impugned common order passed by the learned Sessions Judge, under which accused Nos. 6 and 7, the respondents herein, who faced allegations, inter alia, under Sections 120B, 302 and 307 r/w. 149 I.P.C. and Section 27 of the Arms Act were enlarged on bail.

2. The alleged incident had taken place on 3.11.2006 at about 9 p.m. According to the police, the incident in this case is a sequel to internecine goonda warfare, which has become prevalent in a village by name Kuttoor in Trichur Dist. There is an ongoing feud between the members of two rival gooda groups. The respondents herein are allegedly the ones at the helm of one group. It is alleged that on account of the animosity that exist between the two groups, two deceased persons and the defacto complainant were attacked on 3.11.2006 with dangerous weapons by accused Nos. 1 to 5. It is alleged by the prosecution that the respondents herein are the brains

behind the attack. They were responsible for securing personnel and arms to attack the deceased persons and the defacto complainant. A number of cases are pending between these two groups, it is alleged. All the eight accused persons were arrested on 8.11.2006. When the application for bail came up for consideration on 19.12.2006, the Investigator filed a written objection, a copy of which has been placed before me for my perusal now. The objections clearly show that the prayer for bail is vehemently opposed by the Prosecutor. The learned Sessions Judge, by the impugned order, which I extract below, proceeded to grant bail to the petitioners.

> "Heard both sides. Report perused. The petitioners in the above Crl.M.Cs. are the accused Nos.6 and 7 in Crime No.413/06 of Viyyur Police Station under Sec. 143, 147, 148, 307, 302, 120B, 109, 212 r/w. 149 of Indian Penal Code and 27 of Arms Act. The allegation is that accused Nos. 1 to 5 committed murder of one Sudhakaran and Sajeevan by attacking them with dangerous weapons and they attempted to kill the defacto complainant. The allegation against the petitioners is that they instigated accused 1 to 5 to commit the above crime. The petitioners were arrested on 8.11.06. All the accused are now on remand. Investigation as regards the petitioners is almost over. Hence both the above petitions are allowed. Bail granted to the petitioners on executing bonds for Rs.10,000/- each with sureties to the satisfaction of J.F.C.M. No.I, Thrissur. The petitioners are directed to appear before the investigating Officer as and when required by the Investigating Officer."

3. The learned Prosecutor submits that there has been no proper application of mind at all. The learned Prosecutor points out that the learned Sessions Judge had not even taken note of the fact that the application for bail is opposed by the Prosecutor. The precise complicity of the respondents/accused or the contentions of the Prosecutor have not been adverted to at all. The learned Sessions Judge did not take note of the fact that the Investigation was not complete and the Prosecutor had wanted further time to complete the investigation.

4. The learned Prosecutor further points out that the prosecution badly wanted the continued detention of the respondents to facilitate completion of investigation as the possibility of an approver was also being explored. In any view of the matter, there is complete absence of proper consideration of all relevant circumstances by the learned Sessions Judge. In these circumstances the Public Prosecutor prays that the order of bail may be set aside and the accused persons may be directed to be taken back into custody.

5. The learned counsel for the respondents/accused submits that the mere fact that the learned Sessions Judge had not passed a detailed or even a proper order may not be reckoned as crucial or vital. The learned counsel

submits that the crucial question is whether there are any sufficient circumstances to justify the invocation of the jurisdiction under Section 482 r/w. 439(2) Cr.P.C. to interfere with the order granting bail. The learned counsel further submits that the considerations which would weigh with the court while considering grant of bail and while considering cancellation of bail are totally different. Cancellation of bail is one of the harshest remedies which the law appoints and such jurisdiction may not be lightly invoked. The learned counsel submits that though the respondents have been on bail on the basis of the impugned order for the past two months, there is not a whisper of any allegation that they have abused their freedom or liberty in any manner. In these circumstances the learned counsel for the respondents submits that the order of bail may not be interfered with.

6. I have considered all the relevant inputs. The allegations against the accused are indeed very serious and grave. Goonda warfare in parts of the State is causing great alarm and causing great threat to the law and order situation. The threat has to be dealt with. I shall not venture to consider the materials in detail. Suffice it to say that on a consideration of the details, I am satisfied that grant of bail by the learned Sessions Judge is not justified. It is true that the consideration which will weigh with the

court while considering grant of bail and while considering cancellation of bail granted already would be significantly different. But I cannot lose sight of the fact that in this case the prosecution is complaining about the very grant of bail and not about any subsequent contumacious conduct. The Supreme Court has clearly held that in an appeal against grant of bail considerations that will weigh with the court will not be the same as the ones when cancellation of bail on account of intervening circumstances is considered.

7. To ensure that any observation made by this Court does not fetter the freedom of the learned Sessions Judge to pass appropriate orders later, I am not proceeding to consider the allegations in detail now. Suffice it to say that I am satisfied that the grant of bail at that stage was totally unjustified. I take note of the submission of the learned counsel for the respondents that there is no specific statement at all that the respondents have abused their freedom after their release. I am satisfied in these circumstances that the impugned order can be set aside and the learned Sessions Judge can be directed to dispose of the matter afresh. The learned Sessions Judge, I may hasten to observe, must consider the application for bail on the basis of the circumstances prevalent on the date of consideration

and not on the date of the impugned order or the date of application. All relevant circumstances shall be considered by the learned Sessions Judge and appropriate orders passed. The learned Sessions Judge must pass an order which shall refer to the vitally relevant circumstances though a meticulous and detailed consideration of the acceptability of the materials collected need not be made in the order. Anxious consideration must certainly be there of all relevant inputs.

8. These Crl.M.Cs. are accordingly allowed. The impugned common order is set aside. The respondents are directed to appear before the learned Sessions Judge on 12.3.2007. The learned Sessions Judge shall consider the respondents" application for bail afresh and pass appropriate orders expeditiously.

(R. BASANT)
Judge

HO
tm